Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of

Inquiry Concerning the Deployment of Advanced Telecommunications Capability to all Americans In a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act	)	GN Docket No. 09-137
A National Broadband Plan For Our Future	)	GN Docket No. 09-51

COMMENTS OF

THE DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION

The District of Columbia Public Service Commission ("DC PSC") hereby submits its comments in response to the August 7, 2009 Notice of Inquiry in the above-captioned proceeding.[1] This proceeding is the sixth in a series of inquiries the Federal Communications Commission ("FCC" or "Commission") has conducted in accordance with Section 706 of the Telecommunications Act of 1996, which requires the Commission to inquire into the availability of advanced telecommunications capability to all Americans.[2] In each of the five preceding inquiries the Commission has concluded that broadband was being deployed to all Americans in a reasonable and timely fashion. This time, however, the Commission has specifically recognized the criticism that has haunted previous inquiries; that is, that the data compiled by the Commission was lacking

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1 *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 09-137, Notice of Inquiry, FCC 09-65, rel. August 7, 2009 ("*Section 706 NOI*").

2 47 U.S.C. §1302(b). We note that Section 706 was cited as 47 U.S.C. §157 nt. until its incorporation into the Broadband Data Improvement Act of 2008 ("BDIA").

in sufficient detail to support robust analyses.[3] In this proceeding, the Commission believes that it has responded to that criticism since it will have access to significantly more comprehensive broadband data, derived from the more granular data it has collected on the March 2009 Form 477.[4] The Commission will also have the benefit of the extensive comments filed in the recent docket seeking guidance on the development of a National Broadband Plan.[5]

We commend the Commission for its recognition that improvements must be made in the way data supporting the Section 706 Report is developed. We are pleased to be able to offer our comments in this proceeding because we believe that adoption and deployment of broadband has become key to the well-being of our city.

The District is only 67 square miles, with a population of about 600,000 residents. There are no rural areas in the District; hence we receive no Universal Service High Cost Funds and we are, by far, a net contributor to Universal Service.[6] Our downtown areas are hubs for government offices, economists, academics, lawyers, consultants and others for whom very high speed broadband service is essential. Yet in some low-income residential areas telephone penetration is well below the national norm.[7] In these areas, broadband is, at best, an afterthought. Indeed, over sixteen percent of our citizens live

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3 *Section 706 NOI* at ¶ 1.

4 *Id.* at ¶ 4. Form 477 is the FCC Form used to collect broadband data. In 2008, the Commission revised Form 477 to gain more detailed information about broadband data rates and other matters. *See Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol*, WC Docket No. 07-38, 23 FCC Rcd 9691 (2008)("*2008 Broadband Data Gathering Order*"), Order on Reconsideration, 23 FCC Rcd 9800(2008)("*2008 Broadband Data Gathering Reconsideration Order*").

5 *A National Broadband Plan for Our Future*, GN Docket No. 09-51, 24 FCC Rcd 4342 (2009)("*National Broadband Plan NOI*").

6 District of Columbia ratepayers contribute approximately $33,588,000 to Universal Service Support Mechanism and receive about $1,191,000 in support payments. See Universal Service Monitoring Report, 2008, Table 1.12 at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-287688A1.pdf (last visited August 13, 2009).

7 According to the FCC, household penetration in the District of Columbia is 90.3%, as compared with a nationwide percentage of 95%. See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291222A1.pdf (last visited August 13, 2009).

below the poverty level; on a national level, about twelve percent do.[8] Nationwide about nine percent of families live in poverty; in D.C., over 13% of our families do.[9] Overall, the District has a citywide broadband adoption rate of 57.87%.[10] This statistic masks the near 100% adoption rates in the more affluent parts of the city and the adoption rates below 40% in the less affluent parts.[11] The oft-cited Digital Divide threatens to keep large segments of the D.C. population from learning to use the Internet, foreclosing them from employment opportunities, educational options, access to Internet-based government services, even the advantages of online shopping.

The District government has launched a major effort to prevent our citizens from falling behind in the progression to broadband. Not only has the District implemented a program of "hot spots" where free wireless Internet service is available,[12] our Office of the Chief Technology Officer ("OCTO") has launched a fiber optic telecommunications network that provides network infrastructure support for the District.[13] The DC-NET Fiber Optic Voice/Data System will initially interconnect D.C. government facilities, but will also include schools, libraries and other "community anchor institutions." DC-NET is an important step in overcoming the digital divide and supporting applications like telemedicine, web-casting and video-conferencing.

I. SPECIFIC ISSUES FOR INQUIRY

A. What Is Advanced Telecommunications Capability or Broadband?

We turn now to address those issues raised in the *Section 706 NOI* where we can provide the Commission with assistance. The first question asked by the Commission concerns the fundamental issue of defining what we mean by "advanced

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8 See District of Columbia Census Data at http://projects.washingtonpost.com/2008/elections/dc/census (last visited August 13, 2009).

9 *Id.*

10 District of Columbia Proposal to NTIA for the State Broadband Data and Development Grant program, Opportunity Number 0660-ZA29, August 14, 2009 at 3 ("*DC BDIA Proposal*").

11 *Id.*

12 See http://wifi.dc.gov (last visited August 13, 2009).

13 See http://octo.dc.gov/octo/cwp/view,a,1304,q,624403,octoNav,%7C32780%7C.asp (last visited August 24, 2009).

telecommunications capability" or "broadband". The Commission asks whether terms such as these and "high speed services" should have a unified definition in the Section 706 Report. The DC PSC believes that, as a practical matter, these terms have come to be used interchangeably and the Section 706 Report should reflect that fact. Attempting at this stage to craft separate meanings for "broadband," "advanced telecommunications capability" and "high speed services" would be an exercise in futility only exceeded by the difficulty of enforcing use of the "correct" phrase. Rather, the Commission should encourage a unified definition that encompasses those three terms. We also believe that the Commission should use the same definitions, where possible, in the Section 706 Report and the National Broadband Plan.[14]

As we described in our Reply Comments to the *National Broadband Plan NOI*, we suggest that the Commission use the definition of "broadband" adopted by the Rural Utilities Service ("RUS") and the National Telecommunications and Information Administration ("NTIA") in the July 9, 2009 Notice of Funding Availability.[15] There, the agencies defined broadband as:

> *Broadband* means providing two-way data transmission speeds of at least 768 kilobits per second (kbps) downstream and at lest 200 kbps upstream to end users, or providing sufficient capacity in a middle mile project to support the provision of broadband service to end users.[16]

NTIA and RUS explain why they have adopted this definition, which in its use of the 768 kbps downstream benchmark, capitalizes on the FCC's "Tier 1" threshold in the Form 477 data collection process. According to the *NOFA*, this definition leverages FCC expertise, utilizes an established standard, facilitates the use of common broadband applications (e.g. web browsing, VOIP, and one-way video), allows for cost effective solutions for difficult-to-serve areas and is the most technologically neutral option.[17] In

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[14] If for any reason it is not possible to conform definitions in both documents, the Commission should be prepared to explain the differences and the contexts in which the definitions are used.

[15] Reply Comments of the District of Columbia Public Service Commission, GN Docket No. 09-51, filed July 21, 2009 at 10 ("*DC PSC Reply Comments*"), discussing the RUS/NTIA Notice of Funding Availability, 74 Fed Reg. 33104 (July 9, 2009) ("*NOFA*").

[16] *NOFA* at 33108.

[17] *NOFA* at 33130.

our view, this definition has the added advantage of having been adopted by RUS and NTIA. There must be a reasonable consistency among the agencies responsible for the creation of the National Broadband Plan and the dispensing of over $7 billion to bring that Plan to fruition. Using the same definitions wherever possible will minimize misunderstandings and inefficiencies.

Moreover, while the RUS/NTIA definition includes speed as one of the characteristics of broadband, it does so in a way that both recognizes current technologies, but allows for improvements because it speaks of *at least* 768 kbps. We expect that, in time, higher speeds will become the norm. When that is the case, then the definition can be adjusted to reflect those improvements in technology. For that reason, we believe that the definition should be a fluid one that is reexamined often, by all the interested agencies. Further, the RUS/NTIA definition allows for the asymmetry which is typical in today's marketplace, but does not require it. (Symmetrical speeds of at least 768 kbps would be considered broadband.) We approve of this approach, although we recognize that some entities have argued that most commercially-available broadband technologies offer insufficient upstream broadband capability to originate high-speed video content.[18] That may be the case, but the solution is not to require a symmetrical definition of broadband, but to let the marketplace provide sufficient upstream capability.

The Commission also asks whether the definition of "broadband" should take into account different types of transmission technologies. We think not. The definition should be technology neutral in order to spur the deployment of all technologies without definitional constraint. In any case, a technology dependent definition will become obsolete very quickly.

Finally, we note that the RUS/NTIA definition includes the provision of "middle mile" capacity. We are not convinced that it is necessary to consider middle mile capacity as broadband, which in other respects is defined as provision of service to the end user. However, we appreciate that for the purposes of the *NOFA*, it may be necessary to include the middle mile, so as to provide for the award of middle mile grants when needed. In the interest of uniformity of definition among the three agencies, we support the inclusion of middle mile capability within the definition of broadband.

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[18] See *Section 706 NOI* at n. 129.

B. Is Broadband Available to All Americans?

The Commission next turns its attention to the question of availability of advanced telecommunications capability to all Americans, which "refers to a consumer's ability to purchase a capability that has been deployed."[19] In the past, the FCC has used subscribership data gathered from Form 477s as the indicia of availability and has found, using June 2008 data, that high speed lines nationwide reached 132.8 million and that 95% of ZIP codes had four or more high speed providers with lines in service.[20] However, in this Section 706 Notice, the Commission points out that use of subscribership data, although an indicator of availability, is actually a measure of the adoption of broadband services.[21] The Commission asks whether continued reliance on subscribership data would highlight gaps between availability and demand that should be investigated.

We think the Commission has hit upon one of the unaddressed issues of the previous Section 706 Reports, that is, the absence of any consideration of the difference between deployment and adoption. The fact that there are four high speed providers in almost every ZIP code does not mean that broadband is truly available to all citizens in those ZIP codes, some of which can be very large and cover a lot of demography as well as geography. We expect that the more granular data collection that began with the March 2009 Form 477s may help us to better understand the deployment/adoption gap.[22] We also note that a key factor in availability is affordability. We refer the Commission to our Reply Comments filed in the *National Broadband Plan NOI.* There we discussed the affordability factor and concluded that for low-income Americans, like many in the District of Columbia, broadband should be among the services supported by Universal

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19 *Section 706 NOI* at ¶42, quoting *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, 14 FCC Rcd 2398 (1999)("*Section 706 First Report*").

20 *Section 706 NOI* at ¶ 43.

21 *Id.* at ¶ 45.

22 See Section I.C. for a discussion of Census Tracts vs. Census Blocks.

Service Support Mechanisms, subject to reforms and corrections.[23] In particular, we recommended that the Pilot Program for broadband Lifeline and Link Up customers suggested by the FCC in 2008 be established.[24] Although consideration of Universal Support for broadband is outside the scope of this data-gathering exercise for the Sixth Section 706 Report, we nevertheless commend the Commission to consider issues of affordability when considering the true "availability" of broadband.

The Commission also asks the extent to which it should consider the existence of "community anchor institutions" and publicly-available Internet access points when it considers the availability of broadband. Certainly public access points and Internet-enabled anchor institutions should be considered. They add greatly to the availability and affordability of broadband, particularly for those who must rely on publicly-available computer equipment or those on the move. As described above, the District of Columbia has two programs designed to increase the availability of broadband. The DC Net, which will connect community anchor institutions, and the WiFi "hot spots," of which we now claim over 200. We expect these programs to be essential components in our plans to bring broadband to all citizens of the District.

C. Is Broadband Deployment Reasonable and Timely?

The Commission asks for comment on whether broadband is being deployed to all Americans in a reasonable and timely fashion. In particular, the Commission asks whether, in compiling the list of unserved geographical areas required by the BDIA, it should define "geographic area" in terms of census tracts, which the Commission now uses for Form 477, or whether some other geographic area would better allow the Commission to identify unserved areas. This is a matter of considerable interest to us because we believe that the Commission should analyze data at the most granular level possible in order to better understand whether "reasonable and timely" deployment is occurring.

In June of 2008, the Commission changed the Form 477 broadband connection reporting requirement from a 5 digit ZIP code level of granularity to a census tract

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[23] *DC PSC Reply Comments* at 4.

[24] See *High-Cost Universal Service Support*, 24 FCC Rcd 6475 (2008), Appendices A and C ("*USF NPRM*").

level.[25] In doing so, it specifically rejected using the smaller census block as the basic reporting level, finding that census tracts would be less burdensome.[26] Since that time, however, not only has Congress enacted the BDIA, emphasizing the importance of improving federal and State data on the deployment and adoption of broadband service but the RUS/NTIA NOFA has been issued. There NTIA, in consultation with the Commission, found that broadband data should be collected and displayed at the "address level" by each awardee under the broadband mapping program. That is, data should be collected at the highest level of granularity, individual households. In a subsequent clarification, NTIA allowed awardees to satisfy the requirements of the NOFA by providing a list of all census blocks no greater than two square miles in area in which broadband service is available to end users.[27] It seems that for the Section 706 Reports to be most useful, they should conform to a similar level of granularity. The Commission should require data to be provided at the Census Block level in its Form 477, and should rely upon Census Block data for its Section 706 analysis.

We take this opportunity to remind the Commission of another aspect of data collection that we think essential to the success of our national broadband deployment and adoption efforts, that is, sharing of the collected data with states. In our Joint Comments with the New Jersey Board of Public Utilities in WC Docket No. 07-38, we applauded the use of so-called data sharing arrangements by which the FCC releases to state public utility commissions information which falls within the common interest and jurisdiction of the Commission and the states.[28] This data sharing, which takes place pursuant to formal "Data Sharing Agreements" with confidentiality protections, can be of great help to states in developing plans for the deployment and adoption of broadband, provided the information found on Form 477 is timely shared. We urge the Commission to encourage the widespread use of these data sharing arrangements.

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[25] *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All American*, 23 FCC Rcd. 9691 at ¶¶ 10-15 (2008).

[26] *Id.* at ¶13.

[27] Department of Commerce, *State Broadband Data and Development Grant Program*, RIN 0660-ZA29, NOFA; Clarification, August 7, 2009.

[28] Comments of the District of Columbia Public Service Commission and the New Jersey Board of Public Utilities, WC Docket 07-38, July 30, 2009.

II. CONCLUSION

The DC PSC commends the Commission for its recognition that improvements must be made in the way data supporting the Section 706 Reports is developed. We recommend adoption of the NOFA definition of "broadband", inclusion of "community anchor institutions" in considering the availability of broadband and adoption of census blocks as the basic reporting level. We also remind the Commission of the importance of sharing data with the states, particularly through formal Data Sharing Agreements.

Respectfully submitted,

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